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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 DAVID TROUPE,

8 Plaintiff,

9 v.

10 CHARLES PEASE, et al.,

11 Defendants.
12

No. 4:15-CV-05090-EFS

**ORDER DENYING PLAINTIFF'S MOTION
FOR TEMPORARY RESTRAINING ORDER**

13 Before the Court, without oral argument, is Plaintiff's Motion
14 for Temporary Restraining Order, ECF No. 139. The Court previously
15 set an expedited schedule for this Motion. See ECF No. 140. For the
16 reasons set forth below, the Court denies the Motion.

17 Plaintiff seeks a temporary restraining order to prevent any
18 Defendant from having physical contact with Plaintiff, his property,
19 his legal documents, or his grievances until the completion of this
20 case. In his motion, Plaintiff alleges that Defendants William Hale,
21 Richard Morgan, Charles Pease, Jason Kaehler, and other unidentified
22 individuals have threatened Plaintiff in order to get him to withdraw
23 his lawsuits in this Court. See ECF No. 139 at 2. Plaintiff also
24 claims he was physically assaulted by Defendant Hale while housed at
25 Washington State Penitentiary (WSP) from September 2016 to January
26 2017. ECF No. 139 at 2.

1 Plaintiff also seeks a court order preventing his transfer out
2 of Stafford Creek Corrections Center (Stafford Creek). ECF No. 139 at
3 10. Plaintiff states that he is scheduled to be transferred from
4 Stafford Creek to WSP on August 7, 2017, and argues that he is doing
5 well at Stafford Creek and there exist "no legal grounds to support
6 keeping [him] at WSP." ECF No. 139 at 5, 11.

7 **I. APPLICABLE LAW**

8 The Ninth Circuit has noted that the analysis for issuance of a
9 temporary restraining order is "substantially identical" to the
10 analysis for issuance of a preliminary injunction. *Stuhlbarg Int'l*
11 *Sales Co. v. John D. Brush and Co.*, 240 F.3d 832, 839 n.7 (9th Cir.
12 2001). The primary differences between a temporary restraining order
13 and a preliminary injunction are the duration of the injunction and
14 the availability of argument prior to issuance of the injunction.
15 *Bennett v. Medtronic, Inc.*, 285 F.3d 801, 804 (9th Cir. 2002). A
16 temporary restraining order may last no longer than 14 days and
17 argument is not required prior to issuance of the order. Fed. R. Civ.
18 P. 65. In this case, Plaintiff is requesting immediate, but ongoing
19 relief, so the Court will treat the request as one for a preliminary
20 injunction.

21 "A plaintiff seeking a preliminary injunction must establish
22 that he is likely to succeed on the merits, that he is likely to
23 suffer irreparable harm in the absence of preliminary relief, that the
24 balance of equities tips in his favor, and that an injunction is in
25 the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S.
26 7, 20 (2008). Under this inquiry, "courts must balance the competing

1 claims of injury and must consider the effect on each party of the
2 granting or withholding of the requested relief." *Id.* at 24 (internal
3 quotation marks omitted).

4 When conducting the analysis for issuance of a preliminary
5 injunction, courts must be mindful that injunctive relief is "to be
6 used sparingly, and only in a clear and plain case." See *Rizzo v.*
7 *Goode*, 423 U.S. 362, 378 (1976). If a government agency is involved,
8 it is given the "widest latitude in the dispatch of its own internal
9 affairs." *Id.* at 378-79. Further, if a state agency is involved,
10 federalism concerns may strengthen these considerations, and any
11 resulting injunctive relief must avoid unnecessary disruption to the
12 state agency's normal course of proceeding. See *Gomez v. Vernon*, 255
13 F.3d 1118, 1128 (9th Cir. 2001) (internal quotation omitted). As
14 such, prison administrators must be given "wide-ranging deference in
15 the adoption and execution of policies and practices that in their
16 judgment are needed to preserve internal order and discipline and to
17 maintain institutional security." See *Bell v. Wolfish*, 441 U.S. 520,
18 547 (1979).

19 II. ANALYSIS

20 Here, the Washington State Department of Corrections developed a
21 Custody Facility Plan after consulting with Plaintiff and conducting
22 an official review. See generally ECF Nos. 144-147. Thus far,
23 Plaintiff's claims in this case – as well as the allegations contained
24 in his current Motion – are supported by little more than his own bare
25 assertions. Plaintiff asks the Court to take him at his word that he
26 will be subjected to assault and threats unless the Court grants the

1 extraordinary relief that he requests. Notably, however, Plaintiff
2 expressed no such reservations just last month when he stated that he
3 was fully willing to be transferred to WSP if it meant he would no
4 longer be in the Intensive Management Unit. See ECF No. 144 at 3; 145
5 at 3-4. And Plaintiff has a history of trying to use his legal
6 proceedings to manipulate his prison placement. See *Troupe v. Suckow*,
7 No. 2:13-CV-05038-EFS (E.D. Wash. 2016) (containing multiple motions
8 by Plaintiff regarding his prison placement). Given these
9 considerations, the Court finds that Plaintiff fails to demonstrate a
10 likelihood of success on the merits of his claims, irreparable injury,
11 or that the balance of hardships tips in his favor.

12 Accordingly, **IT IS HEREBY ORDERED:** Plaintiff's Motion for
13 Temporary Restraining Order, **ECF No. 139**, is **CONSTRUED** as a Motion for
14 Preliminary Injunction and is **DENIED**.

15 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this
16 Order and provide copies to Plaintiff and all counsel.

17 **DATED** this 4th day of August 2017.

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19 s/Edward F. Shea
EDWARD F. SHEA
20 Senior United States District Judge
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